

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
ELKINS**

**ROGER A. MCKINNEY,**

Petitioner,

v.

**CIVIL ACTION NO. 2:16-CV-16  
(BAILEY)**

**PATRICK MIRANDY, Warden,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert [Doc. 24]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R&R on July 28, 2016, wherein he recommends that this Court grant the respondent's Motion to Dismiss for Failure to Exhaust State Remedies [Doc. 17], deny and dismiss the petitioner's Petition for Writ of Habeas Corpus [Doc. 1] without prejudice, and deny as moot petitioner's Motion to Appoint Counsel [Doc. 10].

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

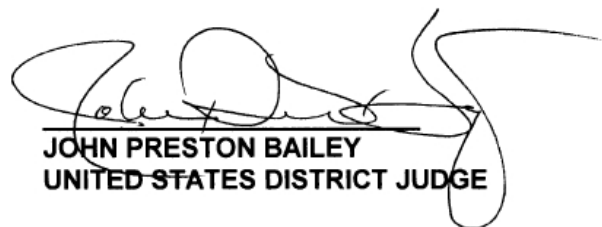
review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on August 1, 2016 [Doc. 25]. No objections have been filed to date. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Doc. 24]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the respondent's **Motion to Dismiss for Failure to Exhaust State Remedies [Doc. 17]** is hereby **GRANTED**. As such, this Court **ORDERS** that the petitioner's **Petition for Writ of Habeas Corpus [Doc. 1]** is **DENIED** and **DISMISSED WITH PREJUDICE**. As an additional matter, this Court orders that petitioner's **Motion to Appoint Counsel [Doc. 10]** is **DENIED AS MOOT**. This Court further **DIRECTS** the Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

**DATED:** August 22, 2016.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE